

REMARKS

Claims 1-76 are in the application. Claim 58 is currently amended; claims 34-38 and 72-76 are withdrawn; and claims 1-33 and 39-71 remain unchanged from the original versions thereof. Claims 1, 22, 31, 34, 39, 60, 69, and 72 are the independent claims herewith.

No new matter is added to the application as a result of the amendments submitted herein.

Reconsideration and further examination are respectfully requested.

Claim Objections

Claim 58 was objected to on the basis of an informality therein. Applicant respectfully submits that currently amended claim 58 overcomes the objection of record.

Accordingly, the reconsideration and withdrawal of the objection to claim 58 are respectfully requested.

Claim Rejections under 35 USC § 101

The Office Action rejected claims 1-38 under 35 U.S.C. §101 for allegedly claiming non-statutory subject matter. Applicant respectfully traverses this ground of rejection.

Claims 1-38 recite embodiments that fall within the statutory classes of invention required by 35 U.S.C. §101 (i.e., process, machine, manufacture, or composition of matter). Further, each of the claims (as admitted in the Office Action) has a "useful, concrete, and tangible result" as required by U.S. patent law. Accordingly, each of the claims is patentable under 35 U.S.C. §101.

Nevertheless, to advance prosecution, Applicant has amended claims 1, 22, and 31 to recite specific computer-implemented features. Accordingly, it is

respectfully submitted that claims 1, 22, 31, and the dependents thereof recite statutory subject matter.

Therefore, Applicant respectfully requests the reconsideration and withdrawal of the 35 USC 101 rejection of claims 1-38.

Claim Restrictions

The Office Action restricted the claims under 35 USC 121 as follows:

- I. Claims 1-33 and 38-71, drawn to determining preferences; and
- II. Claims 34-38 and 72-76, drawn to selecting questions.

Applicant respectfully traverses this rejection.

A provisional election of Group I was made in the present application during a telephonic conversation with the Examiner.

It appears that the Office Action includes a typographical error. That is, Group I apparently should include claims 39-71, not claims 38-71 since claim 39 relates to determining preferences. Should Applicant's interpretation of the restriction be in error, Applicant submits that the election made herein is a bona fide attempt to fully respond to the restriction requirement in a timely manner and requests further clarification and opportunity to respond to same from the Office.

However, to further prosecution, Applicant affirms the provisional election and elects to prosecute Group I, **claims 1-33 and 38-71**. Claims 34-38 and 72-76 are withdrawn as indicated in the listing of the claims submitted herewith.

Claim Rejections under 35 USC § 102(b)

The Office Action rejected claims 1-33 and 38-71 as being anticipated by Herz under 35 U.S.C. §102(b). This rejection is respectfully traversed.

It is noted that claim 38 depends from claim 34 and claims 34-38 constitute a portion of the non-elected claims subject to the restriction

requirement discussed above. Applicant assumes a typographical error on the part of the Office and responds to this rejection on the basis that claims 1-33 and 39-71 were the intended claims of the rejection. Should Applicant's interpretation of the rejection be in error, Applicant submits that the reply herein is a bona fide attempt to fully respond to the rejection in a timely manner and respectively requests further clarification and opportunity to respond from the Office.

Regarding the rejection of independent claims 1 and 39, Applicant respectfully submits that the cited and relied upon Herz does not disclose each and every element of the claims. Each of claims 1 and 39 relates to determining preference information including determining preference information associated with a consumer, and mixing the preference information with preference information associated with a plurality of consumers. Moreover, a degree to which the preference information associated with the consumer is mixed with the preference information associated with the plurality of consumers is different than a second degree to which second preference information associated with a second consumer is mixed with preference information of a second plurality of consumers. Thus, it is clear that Applicant claims mixing preference information associated with a (i.e., one) consumer with preference information associated with a plurality (i.e., more than one) of consumers. Embodiments of preference information associated with a plurality of consumers may include an average of preference information associated with a subgroup of past consumers. (See Specification, [0042])

However, the cited and relied upon Herz fails to disclose, at least, a method and a medium for determining preference information including mixing preference information associated with a consumer with preference information associated with a plurality of consumers wherein a degree to which the preference information associated with the consumer is mixed with the preference information associated with the plurality of consumers is different than a second degree to which second preference information associated with a

second consumer is mixed with preference information of a second plurality of consumers. For example, referring to Herz it is clear that Herz discloses mixing "target objects" of various types, not the claimed preference information that is associated with a consumer. Herz further discloses that a single system thereof may deliver or cluster the target objects of several distinct sorts at once such as, for example, novels and movies, and Web sites and certain products. (See Herz, col. 7, ln. 19-51) It is noted that in addition to the examples of target objects provided above, Herz also defines target objects as being desirable objects such as news, electronic mail, other published documents, product descriptions purchasable items, or even other people. (See Herz, col. 6, ln. 22-25 and 59-63)

Target objects are further disclosed as having a target profile of individual data that describes a target object and constitute the target object's profile or attributes. (See Herz, col. 6, ln. 43-45) The target profiles are disclosed as providing the attributes for a particular target object. Thus, it appears that Herz discloses a target profile that includes attributes for a target object. Herz does not appear to disclose a target profile as including attributes for a plurality of target objects.

Thus, it is not seen where Herz discloses the claimed "preference information associated with a plurality of consumers." Furthermore, it is not seen where Herz discloses the claimed mixing of preference information of a consumer with preference information associated with a plurality of consumers. At most, Herz appears to disclose grouping target objects of varied types in order to determine a similarity between a profile for a target object with the profiles of target objects. (See Herz, col. 6, ln. 38-43)

Regarding the cited and relied upon disclosure of Herz at col. 21, ln. 5 – col. 22, ln. 35, it appears that Herz discusses users and their associated attributes, and target objects and the attributes associated therewith. However, what Herz fails to disclose is any preference information associated with a plurality of users, instead of the disclosed attributes associated with a (i.e., one)

user. The grouping of individual users or individual target objects that each have their own corresponding attributes (disclosed by Herz) is not the same as an attribute associated with a plurality of the users or a plurality of the target objects. While they may be grouped, the individual attributes each only describe the characteristics of the corresponding individual users or individual target objects.

Therefore, Applicant respectfully submits that Herz does not disclose, at least, mixing preference information of a consumer with preference information associated with a plurality of consumers wherein a degree to which the preference information associated with the consumer is mixed with the preference information associated with the plurality of consumers is different than a second degree to which second preference information associated with a second consumer is mixed with preference information of a second plurality of consumers.

Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the 35 USC 102(b) rejection of claims 1 and 39. Claims 2-21 and 40-59 depend from claims 1 and 39, respectively. It is submitted that claims 2-21 and 40-59 are patentable over Herz for at least the same reasons stated herein regarding claims 1 and 39.

Regarding independent claim 22, the rejection relies on the reasoning and basis alleged against claim 11. It is noted that claim 11 is dependent on claim 1, which is believed to be patentable over Herz under 35 USC 102(b) as discussed in detail above. Furthermore, the Office Action rejects the method and medium of claims 22 and 60 for similar reasons.

Inasmuch as Applicant maintains that claim 11 depends from a patentable claim, it is respectfully submitted that claims 22 and 60 are patentable over Herz under 35 USC 102(b), as are the claims 23-30 and 61-68 depending therefrom.

Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 22-30 and 60-69.

Regarding independent claim 31, the rejection relies on the reasoning and basis alleged against claim 2. It is noted that claim 2 is dependent on claim 1 that is believed to be patentable over Herz under 356 USC 102(b) as discussed in detail above. Also, the Office Action rejects the method and medium of claims 31 and 69 for similar reasons.

It is respectfully submitted that claims 31 and 69 are patentable over Herz under 35 USC 102(b), as are the claims 32-33 and 70-71 depending therefrom.

Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 31-33 and 69-71.



CONCLUSION

Accordingly, Applicant respectfully and earnestly requests the allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-0049.

Respectfully submitted,

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